

1 Hadley L. Matarazzo (admitted *pro hac vice*)
2 FARACI LANGE, LLP
3 28 E. Main Street, Suite 1100
Rochester, New York 14614
(585) 325-5150
4 hmatarazzo@faraci.com

5 **IN THE UNITED STATES DISTRICT COURT**
6 **FOR THE DISTRICT OF ARIZONA**

7 IN RE: Bard IVC Filters Products MDL No. 15-02641-PHX-DGC
8 Liability Litigation

9 This document relates to:

10 DEITRA DAVIS,

11 Plaintiff,

CASE No. 2:17-CV-02263-DGC

13 v.

14 C.R. BARD, a New Jersey Corporation;
15 AND BARD PERIPHERAL VASCULAR,
INC., an Arizona Corporation,

16 Defendants.

17 PLAINTIFFS' RESPONSE TO
DEFENDANTS' MOTION TO
DISMISS PLAINTIFF'S
COMPLAINT FOR FAILURE TO
COMPLY WITH AMENDED CASE
MANAGEMENT ORDER NO. 5

18 On June 19, 2019, defendants moved to dismiss plaintiff's complaint for failure to
19 comply with Amended Case Management Order No. 5. For the reasons set forth below,
20 plaintiffs' counsel cannot oppose this motion.

22 **FACTS**

23 Plaintiffs' counsel was contacted in December of 2016 by plaintiff about representation
24 related to complications with what she believed was a Bard IVC filter. Plaintiffs' counsel began
25 investigating and ordered medical records for, *inter alia*, the implantation procedure. After
26 assessing the facts as reported by the plaintiff, plaintiffs' counsel determined that the complaint
27

needed to be filed to ensure it was filed before the statute of limitations ran. On June 5, 2017, plaintiffs' counsel received the implantation medical records and learned the IVC filter implanted in plaintiff was not a Bard IVC filter. Plaintiffs' counsel immediately began trying to contact plaintiff to discuss this development with plaintiff and to seek her permission to voluntarily dismiss the lawsuit. Over a sixteen month period, plaintiffs' counsel attempted to contact plaintiff by phone, mail and finally certified mail. An internet search revealed that plaintiff died on or about December 14, 2017. Plaintiff lived with her daughter, who is her next of kin. Plaintiffs' counsel continued to send mail, including certified mail to her daughter's address in an effort to reach next of kin. Plaintiffs' counsel has not heard from next of kin.

ARGUMENT

Plaintiffs' counsel cannot oppose this motion because (1) plaintiff did not have an IVC filter; (2) despite multiple attempts, plaintiffs' counsel was unable secure permission to file a voluntary dismissal; and (3) plaintiff did not complete a Plaintiff Profile Form because she did not have a Bard IVC filter and could not be reached. In light of these circumstances, plaintiffs' counsel cannot oppose this motion.

CONCLUSION

For the foregoing reasons, plaintiffs' counsel does not oppose this motion.

FARACI LANGE, LLP

By: /s/ Hadley L. Matarazzo
28 E. Main Street, Suite 1100
Rochester, New York 14614
Phone: (585) 325-5150
Fax: (585) 325-3285
hmatarazzo@faraci.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 1, 2019, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send notification of such filing to all counsel of record.

/s/ Hadley L. Matarazzo
FARACI LANGE, LLP
28 E. Main Street, Suite 1100
Rochester, New York 14614
Phone: (585) 325-5150
Fax: (585) 325-3285
hmatarazzo@faraci.com